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## **WHAT EMPLOYEES NEED TO KNOW ABOUT EQUAL EMPLOYMENT OPPORTUNITY**

### Equal Employment Opportunity



# Learning Objectives

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## Participants in this session will:

- Learn What Brings Employees into the EEO Office.
- Comprehend the Basis(es) of Discrimination.
- Understand Individual Responsibilities.



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# **EQUAL EMPLOYMENT OPPORTUNITY**

**AR 690-12 Equal Employment Opportunity and Affirmative Action and Ft Leonard Wood policy ensures equal employment opportunity, prohibits discrimination and harassment in all its forms, and promotes diversity and inclusiveness in the Ft Leonard Wood workplace.**



# Why Do Individuals Come To EEO?

Individuals may come to the EEO Office for many reasons such as:

- **Adverse Personnel Actions**
- **Harassment/Being Bullied**
- **Discrimination**
- **Hostile Working Environment**



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# What are the Basis(es) of Discrimination?

- Race
- Color
- Religion
- Sex
- Sexual/Nonsexual Harassment
  - National Origin
    - Age
- Reprisal/Retaliation
  - Disability
  - GINA



# What Are The Laws That Covers These Bases?

- **Title VII of the Civil Rights Act (1964)**
- **Age Discrimination in Employment Act (1967)**.
- **Rehabilitation Act (1973) Section 501 & Americans with Disabilities Act (ADA) OF 1990**
- **Equal Pay Act (1963)**
- **Civil Rights Act (1991)**
- **Title II of Genetic Information Nondiscrimination Act (GINA) of 2008**



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# What Are The Employee's Responsibilities?

- Ensure that discrimination and harassment in the workplace is not tolerated and that diversity is valued.
- Refrain from harassing behaviors such as, telling off colored jokes, or making fun of coworkers.
- Cooperate with EEO during the EEO process.
- Report harassing or discriminatory behavior to management.



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# What Are The Employee's Responsibilities? *Cont.*

- **Respect a person's wishes when he/she indicates that conduct or attention is not welcome.**
- **Clearly inform those engaging in offensive behavior that you find it objectionable.**
- **Mitigate Damages**
- **Maintain the integrity of the EEO process.**
- **Report harassing or discriminatory behavior to management.**



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# What Are Management's Responsibilities?

- Ensure that discrimination and harassment in the workplace is not tolerated and that diversity is valued.
- Take allegations of harassment or discrimination serious, and take immediately action!
- Do not take part in harassing or discriminatory behaviors.
- Cooperate with EEO during the EEO process.



# How Can Harassment Be Prevented?

Avoid initiating or participating in any behavior that may be misconstrued as possible harassment, including the following types of behavior:

- ✓ **Verbal** (unwelcome comments, yelling, offensive jokes or stories);
- ✓ **Visual** (offensive pictures, photos, cartoons, posters, calendars, magazines or objects);
- ✓ **Physical** (unwelcome touching, hugging, kissing, stroking, ogling or suggestive gestures); and
- ✓ **Written** (unwelcome letters, texts, notes, or e-mails of a personal nature).



# The EEO Complaint Process

- **45 CALENDAR DAYS** To contact the EEO Office with an intent to file a claim.
- **30 CALENDAR DAYS-TRADITIONAL COUNSELING** This is how many days the EEO Counselor takes to perform an informal inquiry into your allegations.
- 90 CALENDAR DAYS-ALTERNATE DISPUTE RESOLUTION** The ADR Program's primary goal is to provide employees with an impartial, confidential avenue to resolve disputes in order to minimize the escalation of disputes to the formal grievance process.



# The EEO Complaint Process

- **15 CALENDAR DAYS** This is how many days after receiving your Notice of Right to File a Formal Complaint that you have to file your Formal Complaint.
- **180 CALENDAR DAYS** This is how long your formal complaint should take to be investigated.



# What We Learned

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- Learn What Brings Employees into the EEO Office.
- Comprehend the Basis(es) of Discrimination.
- Understand Individual Responsibilities for Employees and Management.



# In Summation

- Try to get your issue resolved at the lowest possible level.
- Coming to the EEO Office does NOT stop personnel actions.
- The EEO process is lengthy. Most issues can be resolved with communication. Other form of redress in getting your issues resolved are the Union, Merit Systems Protection Board (MSPB), or Office of Special Counsel (OSC).
- Most importantly, your perception is Your perception. Don't let anyone tell you that "this is the way it's always been done, so just deal with it."



# QUESTIONS?



# **Reasonable Accommodation**

William Paolicelli  
FLW Disability Program Manager



# Learning Objectives

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## Participants in this session will:

- Learn the legal requirements for providing Reasonable Accommodation (RA).
- Understand the responsibility of Department of the Army (DA) to respond to RA requests.
- Be aware of common pitfalls.



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# The Legal Requirements for Reasonable Accommodation (RA)

The Rehabilitation Act of 1973, as amended, requires DA to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for DA ("undue hardship").



# The Rehabilitation Act

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## **The Rehabilitation Act of 1973, as amended, requires:**

- Federal agencies to provide reasonable accommodation. (Section 501)
- That federally funded or sponsored programs be fully accessible. (Section 504)
- That all electronic technology be accessible. (Section 508)



# Defining Reasonable Accommodation

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability

1. apply for a job;
2. perform the duties of a job; or
3. enjoy the benefits & privileges of employment.



# **Reasonable Accommodation**

## **Includes:**

- Making existing facilities readily accessible and usable by persons with disabilities.
- Job restructuring, modifying work schedules, tele-commuting, and reassignment to a vacant position (if qualified).
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.



# Effectiveness of Accommodation



- DA does not have to provide the exact accommodation the employee or job applicant wants.

## BUT

- The accommodation provided **must be effective** in meeting the needs of the employee or applicant in overcoming the workplace barrier



# Which Accommodation Would Be Effective for a Deaf Employee?

- A. Providing an employee who knows sign language to assist at meetings.**
- B. Providing a certified interpreter who has not used sign language in five years.**
- C. Having the employee sit close to the speaker so they can read the speaker's lips.**
- D. Letting them skip the meeting and giving them a summary afterwards.**
- E. A and C.**
- F. None of the above.**



# An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.



# Essential Duties

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- The employee must be able to perform the essential duties of the job, with accommodation if necessary.
- The essential duties are those which are the core purpose of the job, the ones for which the individual's education, experience, and/or skills are valued.
- Driving is not an essential duty for a social worker, IT Supervisor, case manager, etc.



# Requests

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- The accommodation process begins as soon as the request for a change related to a disability is made.
- The request can be oral or written, and made by an individual with a disability or by a family member on their behalf.
- The words “reasonable accommodation” do not have to be used in making the request.
- The request can be made at any time.



# Which one is an Accommodation Request?

- A. An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing."**
- B. A new employee informs the employer that her wheelchair cannot fit under the desk in her office.**
- C. An employee tells his supervisor that he would like a new chair because his present one is uncomfortable.**
- D. A and B**
- E. All of the above.**



# EEOC Opinions

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- Agencies must be able to show that they engaged in the interactive process.
- Decisions must be based on the specific facts provided by the requestor and not on generalizations.
- Deaf employees must automatically receive interpreters or other accommodations for group events, critical meetings such as performance appraisals, and for other situations on request.
- ***Ignoring a request is the equivalent of denying one.***



# Accommodation Basics

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- The whole process should take no more than 30 calendar days for employees and 10 calendar days for applicants.
- Documentation may be requested ONLY if the disability is not obvious and is not on file at CPAC.
- “Updated” documentation may be requested ONLY if the functional limitations have changed.
- The interactive process is required, except for recurring requests, such as for sign language interpreters.



# Accommodation Basics, continued



- The Reasonable Accommodation Committee may be consulted before issuing a decision of a request for accommodation.
- Accommodations should be considered before creating a Performance Improvement Plan or other adverse action if a disability hampers performance
- Accommodations for new employees should be installed and tested before the individual comes on board.
- If an accommodation does not work, the



# Medical Documentation

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## Tips



- If asked by management to provide documentation, it MUST be provided.
- The medical documentation does not need to be “reviewed” by a DA physician.
- In most cases, the first submission is sufficient. DA is not permitted to request the full medical history, etc.
- DA has lost EEO cases because the medical documentation was questioned and additional documentation was requested.



# Accommodation Time Line

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- DA allows 30 calendar days for the process
- Day 0 - Initial request - clock begins
- Within 10 calendar days - Process is completed for applicants.
- Within 10 calendar days - Provide interim accommodation when possible. If disability is not obvious or submitted previously, request medical documentation.
- **Clock stops until medical documentation is submitted.**
- Within 15 calendar days - decide if employee is likely to be able to perform the duties of the job with the requested accommodation.



# Time Line (continued)

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- Within 20 calendar days – decide if the accommodation will be granted.
- May discuss with Reasonable Accommodation Committee prior to responding to the request.
- Within 30 calendar days - Provide accommodation or in extenuating circumstances, an interim workplace adjustment until the requested accommodation can be provided.



# **Extenuating Circumstances**



**Permissible delays are only for circumstances outside the control of DA, such as:**

- Equipment is backordered.
- The vendor normally used has gone out of business.
- Various options need to be tested by the employee to determine which one is most effective.

**Circumstances that may not be used to delay a request are:**

- Absence of the Disabilities Program Manager.
- Request was forgotten.



# Privacy Issues

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- The disability, the request, and the accommodation must all be kept confidential.
- This information may not be shared with other employees. If they ask, the manager can say “Some decisions are made on a case by case basis. If you ever shared a personal situation with me, I would respect your privacy as well.”
- This information should not be left on a desk for other employees to see, or discussed in front of other employees.



**Which of the following can adversely impact the outcome of an EEO complaint?**

- A. Exceeding the timeline for processing and granting/denying a request.**
- B. Failing to maintain confidentiality of medical documentation and disability information.**
- C. Failing to engage in the interactive process.**
- D. All of the above.**



# Employee Responsibilities

- Research workable, reasonable accommodations that the employer can facilitate
- Be prepared to provide specific medical documentation that includes a prognosis and/or a time frame for the accommodation
- Make the request through the appropriate channels (the decision making supervisor or through the EEO Office)
- Being honest



# Manager & Supervisor Responsibilities

- Respond promptly.
- Ensure that DA's procedures are followed.
- Provide interim accommodations if there will be a delay.
- Cooperate with HR when an employee must be reassigned as an accommodation.
- Ensure that each step is documented and the accommodation or denial is provided within 30 days.
- Provide all information to the DPM to file in a locked cabinet



# Common Pitfalls- Employees

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- Not mentioning a disability until AFTER performance issues become apparent
- Asking for accommodation(s) for undocumented disabilities
- Asking for unrealistic or unreasonable accommodations (specifically- job reassignment where the individual is not qualified)
- Sharing disability information with other employees
- Not following through with requests for accommodation



# Common Pitfalls- Management

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- Asking for updated medical documentation for the same accommodation (no new functional limitation).
- Ignoring the request.
- Making an assumption about what is needed.
- Treating the employee as a “problem.”
- Sharing the disability information with other employees.
- Leaving the employee out of staff meetings and training because of no



# Resources

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- The Job Accommodation Network (askjan.org)
- The DoD's Computer/Electronics Accommodation Program (CAP)
- The installation's EEO Officer
- The regional Office of General Counsel.
- The Administration's EEO Office.



# Reminders

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- It is DA's goal to hire and retain employees with disabilities, especially those with targeted disabilities.
- If an employee fails a physical, accommodation should be explored.
- If an employee has an on the job injury and applies for OWCP, accommodation is a separate process and should be explored.
- If an applicant is offered the job but fails the physical exam, unless the individual has a communicable disease, accommodation should be explored.



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# QUESTIONS?